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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/630,336	
	Filing Date	July 30, 2003	
	First Named Inventor	Philip E. Eggers	
	Art Unit	3736	
	Examiner Name	Charles Alan Marmor, II	
Total Number of Pages in This Submission	3	Attorney Docket Number	NET 2-097

ENCLOSURES (Check all that apply)		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Mueller and Smith, LPA		
Signature			
Printed name	Gerald L. Smith		
Date	December 29, 2004	Reg. No.	22,009

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Appln. No. 10/630,336
Reply to Office Action of: December 23, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Philip E. Eggers, et al.)
)
Serial No:10/630,336)
Filed: July 30, 2003)
For: "Electrosurgical Method and Apparatus)
With Dense Tissue Recovery Capacity")

TC/AU 3736

Examiner Charles Alan Marmor, II

Attorney Docket No. NET 2-097

Honorable Commissioner for Patents
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Response

Sir:

An Office Action was mailed December 23, 2004 asserting a restriction requirement under Section 121 of the Patent Statute. In levying this restriction requirement, the Examiner has identified a Group I incorporating claims 1-17 and a Group II incorporating claims 18-26.

Applicant provisionally elects, with traverse, Group I incorporating claims 1-17.

Section 121 of the Patent Statute authorizes a requirement for a restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of Group I and the invention defined by the claims of Group II may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirement in definite terms. The construction adopted by the Manual of Patent Examining Procedure assumes that the Statute authorizes restriction between the inventions which are not independent and distinct but which are either independent or distinct. It is applicant's position that the


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plain meaning of the Statute defies such construction. For this reason, applicant requests that the restriction requirement be withdrawn so that all of the claims may be prosecuted as a single invention.

Respectfully submitted,

Date: 29 Dec 04


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